

Senate Bill No. 1457

CHAPTER 571

An act to amend Section 17529.5 of the Business and Professions Code, relating to business.

[Approved by Governor September 17, 2004. Filed
with Secretary of State September 17, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1457, Murray. Commercial e-mail advertisements.

Existing state law prohibits a person or entity from advertising in a commercial e-mail advertisement that is sent either from California or to a California e-mail address if the e-mail contains or is accompanied by a 3rd-party's domain name without permission, contains or is accompanied by falsified, misrepresented, obscured, or forged header information, or has a misleading subject line. Existing state law authorizes the recipient of an unsolicited commercial e-mail advertisement transmitted in violation of these prohibitions, an e-mail service provider, or the Attorney General to bring an action to recover actual damages for a violation of this prohibition, and authorizes a court to award reasonable attorney's fees and costs if they are a prevailing plaintiff.

This bill would delete the prohibition against obscured header information. The bill would authorize the Attorney General, an e-mail service provider, or the recipient of an unsolicited commercial e-mail advertisement transmitted in violation of these provisions to bring an action to recover liquidated damages of \$1,000 per unsolicited commercial e-mail advertisement transmitted in violation of the provisions, up to \$1,000,000 per incident, subject to reduction by the court. The bill would prohibit the bringing of multiple actions under different damages provisions relating to e-mail advertisements for the same violation.

The people of the State of California do enact as follows:

SECTION 1. Section 17529.5 of the Business and Professions Code is amended to read:

17529.5. (a) It is unlawful for any person or entity to advertise in a commercial e-mail advertisement either sent from California or sent to a California electronic mail address under any of the following circumstances:

(1) The e-mail advertisement contains or is accompanied by a third-party's domain name without the permission of the third party.

(2) The e-mail advertisement contains or is accompanied by falsified, misrepresented, or forged header information. This paragraph does not apply to truthful information used by a third party who has been lawfully authorized by the advertiser to use that information.

(3) The e-mail advertisement has a subject line that a person knows would be likely to mislead a recipient, acting reasonably under the circumstances, about a material fact regarding the contents or subject matter of the message.

(b) (1) (A) In addition to any other remedies provided by any other provision of law, the following may bring an action against a person or entity that violates any provision of this section:

(i) The Attorney General.

(ii) An electronic mail service provider.

(iii) A recipient of an unsolicited commercial e-mail advertisement, as defined in Section 17529.1.

(B) A person or entity bringing an action pursuant to subparagraph (A) may recover either or both of the following:

(i) Actual damages.

(ii) Liquidated damages of one thousand dollars (\$1,000) for each unsolicited commercial e-mail advertisement transmitted in violation of this section, up to one million dollars (\$1,000,000) per incident.

(C) The recipient, an electronic mail service provider, or the Attorney General, if the prevailing plaintiff, may also recover reasonable attorney's fees and costs.

(D) However, there shall not be a cause of action under this section against an electronic mail service provider that is only involved in the routine transmission of the e-mail advertisement over its computer network.

(2) If the court finds that the defendant established and implemented, with due care, practices and procedures reasonably designed to effectively prevent unsolicited commercial e-mail advertisements that are in violation of this section, the court shall reduce the liquidated damages recoverable under paragraph (1) to a maximum of one hundred dollars (\$100) for each unsolicited commercial e-mail advertisement, or a maximum of one hundred thousand dollars (\$100,000) per incident.

(3) (A) A person who has brought an action against a party under this section shall not bring an action against that party under Section 17529.8 or 17538.45 for the same commercial e-mail advertisement, as defined in subdivision (c) of Section 17529.1.

(B) A person who has brought an action against a party under Section 17529.8 or 17538.45 shall not bring an action against that party under

this section for the same commercial e-mail advertisement, as defined in subdivision (c) of Section 17529.1.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

